

STATE OF MICHIGAN
COURT OF APPEALS

NPB MORTGAGE, L.L.C.,

Plaintiff-Appellee,

v

LINDSEY GOLLIDAY and NICOLA
GOLLIDAY,

Defendants-Appellants.

UNPUBLISHED
February 16, 2012

No. 301830
Berrien Circuit Court
LC No. 2010-000078-CZ

NPB MORTGAGE, L.L.C.,

Plaintiff-Appellee,

v

LESLEY GOLLIDAY and DOROTHY
GOLLIDAY,

Defendants-Appellants.

No. 301831
Berrien Circuit Court
LC No. 2010-000079-CZ

Before: SAWYER, P.J., and O'CONNELL and RONAYNE KRAUSE, JJ.

PER CURIAM.

In docket number 301830, defendants Lindsey Golliday and Nicola Golliday appeal as of right a deficiency judgment entered against them. In the consolidated appeal, docket number 301831, defendants Lesley Golliday and Dorothy Golliday appeal as of right a deficiency judgment against them involving a separate parcel of property. We affirm in both cases.

I. DOCKET NO. 301830

Plaintiff loaned money to Lindsey and Nicola (defendants) to purchase property and secured the debt by a mortgage. Defendants defaulted, and the property was foreclosed by advertisement, in accordance with MCL 600.3201 *et seq.* Plaintiff purchased the property at the sheriff's sale for less than the amount owed. Plaintiff sued for a deficiency judgment, which the trial court granted after a bench trial.

Defendants first argue that the price plaintiff paid for the property was inadequate. A trial court's findings regarding the fair market value of a property sold by foreclosure by advertisement are factual matters. *Stewart v Eaton*, 287 Mich 466, 483-485; 283 NW 651 (1939). We review the trial court's factual findings regarding the sufficiency of the sale price at the sheriff's sale for clear error. See *Flint v Chrisdom Props, Ltd*, 283 Mich App 494, 498; 770 NW2d 888 (2009). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *CG Automation & Fixture, Inc v Autoform, Inc*, 291 Mich App 333, 337-338; 804 NW2d 781 (2011) (quotation omitted).

Generally, a mere allegation by the borrower that the purchase price of a property at a foreclosure by advertisement proceeding is low is insufficient to "vitate an otherwise fair and regular statutory foreclosure sale." See *Macklem v Warren Constr Co*, 343 Mich 334, 339; 72 NW2d 60 (1955). MCL 600.3280 provides the standard that governs borrowers who challenge a deficiency judgment. The borrower must

allege and show . . . that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value, and such showing shall constitute a defense to such action and shall defeat the deficiency judgment against him, either in whole or in part to such extent. [MCL 600.3280.]

Defendants failed to comply with this statutory requirement. Instead, they cite *Detroit Trust v Hart*, 274 Mich 144; 264 NW 321 (1936), and argue that a court can refuse to confirm a foreclosure where the price is so low it "shocks the conscience of the court." *Id.* at 146 (quotation omitted). *Detroit Trust* is inapplicable as it involved a judicial foreclosure action, not a foreclosure by advertisement. *Id.* at 145. The present action is one involving plaintiff seeking a deficiency judgment by statute. "The power to render a deficiency decree in foreclosure proceedings is entirely statutory" and "[t]he statutory authority is found in MCL 600.3280." *Bank of Three Oaks v Lakefront Props*, 178 Mich App 551, 555-556; 444 NW2d 217 (1989).

The record supports the trial court's determination that defendants failed to present any evidence to support their assertion. Defendants presented no admissible evidence to indicate that the price paid by plaintiff was substantially less than the subject property's true value. Consequently, we find no clear error in the trial court's determination that the purchase price was not substantially less than the property's true value.

Defendants next argue the trial court erred in failing to consider any appraisal evidence. While defendants make an effort to incorporate the argument presented in docket number 301381, we find this to be insufficient. The two cases involved similar, but not identical, facts, and each case had a separate trial. Defendants have failed to provide any citation to the record or argument regarding their specific case, and we decline to speculate as to the basis for defendants' assertions. See *Begin v Mich Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009). We note that even if we considered this issue, we would find it meritless for the reasons discussed below.

II. DOCKET NO. 301831

In addition to the loan plaintiff issued to Lindsey and Nicola Golliday, plaintiff also loaned money to defendants Lesley and Dorothy Golliday to purchase property. The debt was secured by a mortgage. Defendants defaulted, and the property was foreclosed by advertisement, in accordance with MCL 600.3201 *et seq.* Plaintiff purchased the property at the sheriff's sale for less than the amount owed by defendants. Plaintiff sued for a deficiency judgment, which the trial court granted after a bench trial.

Defendants first argue that the price plaintiff paid for the subject property was inadequate. Like the defendants in the first case, defendants in this case presented no admissible evidence regarding the value of the subject property. We disagree with their suggestion that a \$19,000 amount that plaintiff required to release less than an acre of the property should be used to calculate the value of the subject property. Plaintiff's employee explicitly denied that the \$19,000 figure could be used to determine the market value of the subject property, and defendants presented no evidence to the contrary.

Further, defendants argue that the price paid by plaintiff was too low because plaintiff was apparently unaware of a road on the subject property. Even if evidence would have been presented confirming the existence of this road—and we located no such evidence in the record—defendants did not present evidence that the road enhanced the value of the property. Defendants thus did not meet their statutory burden under MCL 600.3280 to show that the sale price was substantially less than the true value. The trial court properly considered that, while plaintiff purchased the property for \$93,590, plaintiff later sold it at auction for approximately \$32,500. Consequently, the trial court's determination that the subject property was not purchased by plaintiff for substantially less than its true value was not clearly erroneous.

Defendants' final argument is that the trial court erred in failing to consider appraisal evidence before determining the value of the subject property. Defendants appear to be under the misapprehension that a trial court cannot enter a deficiency judgment against a party without first considering expert testimony or a formal appraisal of the property. MCL 600.3280 places no such requirement on the trial court. Instead, MCL 600.3280 requires the party seeking to reduce or eliminate the amount of the deficiency judgment to demonstrate the price paid by the lender was substantially less than the true value. *Cf. Pulleyblank v Cape*, 179 Mich App 690, 694; 446 NW2d 345 (1989).

Defendants contend that expert appraisal information is always required in a deficiency action, citing *Kansas City Life Ins v Durant*, 99 Mich App 754, 762; 298 NW2d 630 (1980). We disagree. *Kansas City Life* merely involved a case where the parties did present experts in the trial court. We find nothing in *Kansas City Life* that stands for the proposition that a trial court must require and consider expert testimony or an appraisal before a deficiency judgment can be granted. In the present case, defendants presented no admissible evidence regarding the value of the subject property. Consequently, we find no clear error in the trial court's decision.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Amy Ronayne Krause